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EXAMINER	
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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Paper No. 20

Application Number: 10/075,786
Filing Date: February 13, 2002
Appellant(s): HOLLAND ET AL.

C. Robert Rhodes
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed July 2, 2003.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

A statement identifying the related appeals and interferences, which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is incorrect.

The amendment after final rejection filed on July 2, 2003, canceling claims 14-26 has been entered.

(5) Summary of Invention

The summary of invention contained in the brief is deficient because it doesn't correctly disclose a concise explanation of the invention defined in the claims involved in the appeal, by referring to the specification by page and line number, and to the drawing, if any, by reference characters.

(6) Issues

The appellant's statement of the issues in the brief is substantially correct. The changes are as follows: Whether or not claims 1-9 and 24-35 are rendered obvious to one of ordinary skill in the art by modifying the teachings of Andrieu (Pat Num 5,300,337) in view of Holland et al (Pat Num 5,395,682). Whether or not claims 10-12 and 36-38 are rendered obvious to one of ordinary skill in the art by modifying the teachings of Andrieu (Pat Num 5,300,337) in view of Holland et al (Pat Num 5,395,682) further in view of Kite, III et al (Pat Num 4,891,256). Whether or not claims 13 and 39 are rendered obvious to one of ordinary skill in the art by modifying the teachings of Andrieu (Pat Num 5,300,337) in view of Holland et al (Pat Num 5,395,682) further in view of Holt et al (Pat Num 5,070,597). Whether or not claim 40 is rendered obvious to one of ordinary skill in the art by modifying the teachings of Ratigan (Pat Num 5,441,790) in view of Holland et al (Pat Num 5,395,682).

(7) Grouping of Claims

The rejection of claims 1-13 and 27-40 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) Claims Appealed

A substantially correct copy of appealed claims 1-40 appears on pages 14-19 of the Appendix to the appellant's brief. The minor errors are as follows: Claims 14-26 have been canceled based on the entering of the after final amendment submitted on July 2, 2003.

(9) Prior Art of Record

5,300,337	ANDRIEU et al	04-1994
5,395,682	HOLLAND et al	5,395,682
4,891,256	KITE, III et al	01-1990
5,070,597	HOLT et al	12-1991
5,441,790	RATIGAN	08-1995

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

1. Claims 1-9 and 27-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Andrieu (Pat Num 5,300,337) in view of Holland et al (Pat Num 5,395,682, herein referred to as Holland). Andrieu discloses a protective cover (Figs 1-4) for cables or hoses (abstract), which are capable of being used in environments wherein the cover (Figs 1-4) may be subject to abrasion and weather extremes (i.e. heat, Col 1, lines 12-20). Specifically, with respect to claim 1, Andrieu discloses a protective cover (10) comprising a sleeve (Figs 1-2, Col 3, lines 55-59) capable of surrounding a cable or hose (abstract, Fig 4), wherein the sleeve has open ends (left and right ends) and is formed of a fabric (10) made of substantially high strength yarn (11, i.e. polyester, Col 3, lines 8-12). With respect to claim 2, Andrieu discloses that the fabric (11) is formed from at least 70 percent high strength yarns (i.e. 100 % polyester). With respect to claim 6, Andrieu discloses that the high strength yarn (11, i.e. polyester) is about 400 to 1000 denier (i.e. 600-2500, Col 3, lines 60-67). With respect to claim 7, Andrieu discloses that the fabric covering (10) has a warp and fill density of about 40 ends per

inch (Col 4, lines 1-10). With respect to claim 8, Andrieu discloses that the sleeve (Fig 1) is formed as an elongated sheet having opposing longitudinal edges (top and bottom edges), wherein the opposed longitudinal edges (top and bottom edges) includes means (15) for releasably attaching the opposed longitudinally edges together (Col 4, lines 24-31) around the length of a cable or hose (abstract, Fig 4). With respect to claim 9, Andrieu discloses that the means (15) for fastening the longitudinal edges comprises hook and loop material (see 15, Col 4, lines 35-47). With respect to claim 27, Andrieu discloses an abrasion resistant cable system (Fig 4) comprising a cable (not numbered) that is subject to being periodically moved across abrasion surfaces (Col 1, lines 12-20) and a protective sleeve (10) surrounding the cable, which is formed from a fabric made of substantially high performance yarn (i.e. polyester), has open ends (left and right ends), and protects the cable (Fig 4) from abrasion and wear thereof (Col 1, lines 12-20). With respect to claim 28, Andrieu discloses that the fabric (11) is formed from at least 70 percent high strength yarns (i.e. 100 % polyester). With respect to claim 32, Andrieu discloses that the high strength yarn (11, i.e. polyester) is about 400 to 1000 denier (i.e. 600-2500, Col 3, lines 60-67). With respect to claim 33, Andrieu discloses that the fabric covering (10) has a warp and fill density of about 40 ends per inch (Col 4, lines 1-10). With respect to claim 34, Andrieu discloses that the sleeve (Fig 1) is formed as an elongated sheet having opposing longitudinal edges (top and bottom edges), wherein the opposed longitudinal edges (top and bottom edges) includes means (15) for releasably attaching the opposed longitudinally edges together (Col 4, lines 24-31) around the length of a cable or hose (abstract, Fig 4). With respect to claim 35, Andrieu

discloses that the means (15) for fastening the longitudinal edges comprises hook and loop material (see 15, Col 4, lines 35-47).

However, Andrieu doesn't necessarily disclose the protective cover being made of a high performance yarns having a tensile modulus equal to or greater than 150g/denier and a tenacity equal to or greater than 7 grams/denier, wherein the yarns are cut and tear resistant (claims 1 & 27), nor the protective cover being made of a material fabric having a weight of between of between about 5 & 8 ounces per square yard (claims 3 & 29), nor the fabric being resistant to petroleum based products (claims 4 & 30), nor the high strength yarn being selected from the group consisting of long chain polyethylenes, high strength aramids, liquid crystal polymers, and combinations thereof (claims 5 & 31), nor the fabric density of between about 30 and 36 inches per inch (claims 7 & 33).

Holland teaches a protective cover, that is made of Spectra® fibers (Col 2, lines 28-37), that overcomes the disadvantages of polyester fabric covers (Col 2, lines 16-23), has minimal weight, increased abrasion resistance, tear strength, cut and stab resistance, and is compatible with the environment (Col 1, lines 5-10). Specifically, with respect to claim 1, Holland teaches that the protective cover is made of high performance yarns, such as Spectra® fibers that inherently has a tensile modulus equal to or greater than 150g/denier and a tenacity equal to or greater than 7 grams/denier. With respect to claim 3, Holland teaches that the fibers may be used to form a fabric having a weight of between about 5 & 8 ounces per square yard (Col 2, lines 49-51) for the purpose of providing a fabric that is lightweight while also providing a sufficient

strength and durability to withstand the use and environment to the fabric is exposed (Col 2, lines 51-56). With respect to claim 4, Holland teaches that the fabric formed of Spectra® fibers are chemical resistance to petroleum-based products (Col 4, lines 45-51). With respect to claim 5, Holland teaches that the fabric containing Spectra® fibers, which are long chain extended polyethylene (Col 2, lines 25-30). With respect to claims 7, Holland teaches that the fabric may be constructed to have a warp and fill density of between 30 and 36 ends per inch (Col 2, lines 49-51). With respect to claim 27, Holland teaches that the protective cover is made of high performance yarns, such as Spectra® fibers that inherently has a tensile modulus equal to or greater than 150g/denier and a tenacity equal to or greater than 7 grams/denier. With respect to claim 29, Holland teaches that the fibers may be used to form a fabric having a weight of between about 5 & 8 ounces per square yard (Col 2, lines 49-51) for the purpose of providing a fabric that is lightweight while also providing a sufficient strength and durability to withstand the use and environment to the fabric is exposed (Col 2, lines 51-56). With respect to claim 30, Holland teaches that the fabric formed of Spectra® fibers are chemical resistance to petroleum-based products (Col 4, lines 45-51). With respect to claim 31, Holland teaches that the fabric containing Spectra® fibers, which are long chain extended polyethylene (Col 2, lines 25-30). With respect to claim 33, Holland teaches that the fabric may be constructed to have a warp and fill density of between 30 and 36 ends per inch (Col 2, lines 49-51).

With respect to claims 1-9 and 27-35, it would have been obvious to one having ordinary skill in the art of cables at the time the invention was made to modify the

protective cover, which is made of polyester fibers, of Andrieu to comprise the Spectra® fibers and the fabric parameters of the protective fabric as taught by Holland because Holland teaches that such a fabric by made of commercially available Spectra® fibers and having the specified parameters, overcomes the disadvantages of polyester fabric covers (Col 2, lines 16-23), has minimal weight, increased abrasion resistance, tear strength, cut and stab resistance, and is compatible with the environment in which the cover is used (Col 1, lines 5-10) and since it has been held to be within general skill of a worker in the art to select a commercially available or known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

2. Claim 40 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ratigan (Pat Num 5,441,790) in view of Holland et al (Pat Num 5,395,682). Ratigan discloses a protective cover (1) for use with a rope (Figs 1-4), and which is used in environments in which lengths of the rope are subject to abrasion (Col 1, lines 5-10). Specifically, with respect to claim 40, Ratigan discloses an abrasion resistant rope (5) of the type that is capable of periodically moved across abrasive surfaces (Col 1, lines 62-68) comprising a sleeve (Fig 1) surrounding a length of a rope (5), wherein the sleeve (Fig 1) is formed of a fabric (i.e. textile material) made of substantially high strength yarn (i.e. polyester fibers, Col 2, lines 1-3).

However, Ratigan doesn't necessarily disclose the protective cover being made of a high performance yarns having a tensile modulus equal to or greater than

150g/denier and a tenacity equal to or greater than 7 grams/denier, wherein the sleeve is cut resistant or cut resistant (claim 40).

Holland teaches a protective cover, that is made of Spectra® fibers (Col 2, lines 28-37), that overcomes the disadvantages of polyester fabric covers (Col 2, lines 16-23), has minimal weight, increased abrasion resistance, tear strength, cut and stab resistance, and is compatible with the environment (Col 1, lines 5-10). Specifically, with respect to claim 40, Holland teaches that the protective cover is made of high performance yarns, such as Spectra® fibers that inherently has a tensile modulus equal to or greater than 150g/denier and a tenacity equal to or greater than 7 grams/denier.

With respect to claim 40, it would have been obvious to one having ordinary skill in the art of cables at the time the invention was made to modify the protective cover, which is made of polyester fibers, of Andrieu to comprise the Spectra® fibers and the fabric parameters of the protective fabric as taught by Holland because Holland teaches that such a fabric by made of commercially available Spectra® fibers and having the specified parameters, overcomes the disadvantages of polyester fabric covers (Col 2, lines 16-23), has minimal weight, increased abrasion resistance, tear strength, cut and stab resistance, and is compatible with the environment in which the cover is used (Col 1, lines 5-10) and since it has been held to be within general skill of a worker in the art to select a commercially available or known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

3. Claims 10-12 and 36-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Andrieu (Pat Num 5,300,337) in view of Holland et al (Pat Num

5,395,682, herein referred to as modified Andrieu), as applied to claims 1 and 27 above, further in view of Kite, III et al (Pat Num 4,891,256, herein referred to as Kite). Modified Andrieu discloses a protective cover (Figs 1-4) for cables or hoses (abstract), which are capable of being used in environments wherein the cover (Figs 1-4) may be subject to abrasion and weather extremes (i.e. heat, Col 1, lines 12-20) as described above. Specifically, with respect to claim 10, modified Andrieu discloses a protective cover (10) comprising a sleeve (Figs 1-2, Col 3, lines 55-59) capable of surrounding a cable or hose (abstract, Fig 4). With respect to claim 11, modified Andrieu discloses that the sleeve (Fig 1) is formed having opposing longitudinal edges (top and bottom edges), wherein the opposed longitudinal edges (top and bottom edges) includes means (15) for releasably attaching the opposed longitudinally edges together (Col 4, lines 24-31) around the length of a cable or hose (abstract, Fig 4). With respect to claim 12, modified Andrieu discloses that the means (15) for fastening the longitudinal edges comprises hook and loop material (see 15, Col 4, lines 35-47). With respect to claim 36, modified Andrieu discloses a protective cover (10) comprising a sleeve (Figs 1-2, Col 3, lines 55-59) capable of surrounding a cable or hose (abstract, Fig 4). With respect to claim 37, modified Andrieu discloses that the sleeve (Fig 1) is formed having opposing longitudinal edges (top and bottom edges), wherein the opposed longitudinal edges (top and bottom edges) includes means (15) for releasably attaching the opposed longitudinally edges together (Col 4, lines 24-31) around the length of a cable or hose (abstract, Fig 4). With respect to claim 38, modified Andrieu discloses that the

means (15) for fastening the longitudinal edges comprises hook and loop material (see 15, Col 4, lines 35-47).

However, modified Andrieu doesn't necessarily disclose the sleeve being a plurality of bands comprising a short length of the fabric and being spaced apart along the length of the cable or hose (claims 10 & 36), nor each band having opposed longitudinally edges including means for fastening the opposed longitudinally edges together around the length of the cable (claims 11 & 37).

Kite teaches a wraparound closure device (Figs 1-4) made of a fabric that protects elongated substrates, such as cables, from abrasion (Col 1, lines 5-10). Specifically, with respect to claims 10 & 36, Kite teaches a wraparound sleeve (10-Fig 3) that may be made of polyester (Col 4, line 49-50) and is formed as a plurality of bands (see three fabric sleeves not numbered) wherein each band comprises a short length of the fabric which are spaced apart along the length of the cable (Fig 3) for the purpose of providing effective bundling device that accommodates multiple cable break-outs (Col 1, lines 38-45). With respect to claims 11 & 37, Kite teaches that each short length of fabric (see 3 section of fabric, Fig 3) having opposed longitudinally edges (left and right sides of all three fabrics) wherein the opposed longitudinally edges has means (24, 30, & 32) for fastening the opposed longitudinally edges together around a length of the cable (Fig 3).

With respect to claims 10-11 & 36-37, it would have been obvious to one having ordinary skill in the art of cables at the time the invention was made to modify the polyester protective cover of modified Andrieu to comprise a multiple protective covers

as taught by the Kite because Kite teaches that such a fabric configuration protects elongated articles from abrasion (Col 4, lines 5-8) and provides effective bundling device that accommodates multiple cable break-outs (Col 1, lines 38-45) and since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. (*St. Regis Paper Co v. Bemis Co., 193 USPQ 8).*

4. Claims 13 & 39 rejected under 35 U.S.C. 103(a) as being unpatentable over Andrieu (Pat Num 5,300,337) in view of Holland et al (Pat Num 5,395,682, herein referred to as modified Andrieu), as applied to claims 1 and 27 above, further in view of Holt et al (Pat Num 5,070,597, herein referred to as Holt). Modified Andrieu discloses a protective cover (Figs 1-4) for cables or hoses (abstract), which are capable of being used in environments wherein the cover (Figs 1-4) may be subject to abrasion and weather extremes (i.e. heat, Col 1, lines 12-20) as detailed above with reference to claims 1 & 27.

However, modified Andrieu doesn't necessarily disclose the protective cover further comprising a hood made of the same fabric and fastened to at least one end of the sleeve for protecting the exposed end of the cable or hose (claims 13 & 39).

Holt teaches a double wall protective cover (Figs 1-19b) comprising flame retardant, abrasion resistance, and split or tear resistance (Col 18, lines 21-26), for the purpose of providing environmental protection, including electrical protection, and joining or mechanical holding of substrates such as cables or pipes (Col 1, lines 17-21). Specifically, with respect to claims 13 & 39, Holt discloses that the protective cover (Figs 1-19b) may be formed of polyester (Col 7, line 36) and as a hood (i.e. end cap, 19,

Figs 6a-d), wherein the hood (19) may be fastened to at least one end of the cable or pipe (22) for protecting the exposed end of the cable or pipe (22, Col 29, lines 23-24).

With respect to claims 13 & 39, it would have been obvious to one having ordinary skill in the art of cables at the time the invention was made to modify the cable or pipe assembly of modified Andrieu to comprise a end cap protective cover formed of fabric as taught by the Holt because Holt teaches that fabrics, having excellent flame retardant, abrasion resistance, and split or tear resistance (Col 18, lines 21-26), are commonly used to protect cables and pipes are sometimes formed as end cap cover configuration that provides environmental protection, including electrical protection for the joining or mechanical holding of substrates such as cables or pipes (Col 1, lines 17-21) and also provides protection for the exposed ends of cables or pipes (Col 29, lines 23-24).

(11) Response to Argument

Applicant's arguments filed July 02, 2003 have been fully considered but they are not persuasive. The applicant argues:

A) The prior art is different because Andrieu doesn't describe how or why fabric formed from inexpensive polyester yarns could possibly be deemed abrasion resistant nor does Andrieu recognizes or solves the problems addressed by the present invention.

B) Kite is directed to a wraparound closure device and doesn't employ or suggest high performance yarns to form abrasion resistant, cut resistant, and tear resistant protective covers.

C) Holt doesn't in any way or shape form a fabric and cover of the claimed invention.

D) The examiner has failed to justify the proposed modification to the primary reference Andrieu because there is no scintilla of motivation or suggestion that would prompt one of ordinary skill in the art to combine Holland with Andrieu and therefore the combination of the references is improper.

E) The examiner has not established a prima facie case of obviousness and therefore the combination of the references is improper.

F) The examiner is incorrect to state the polyester fibers are high performance yarns, because the examiner has pointed to nothing that would suggest that polyester is a high performance yarn.

G) Holland is a cargo cover and not a cover for hoses or hoses.

H) Andrieu teaches against utilizing the material of Holland because Andrieu specifically states that the cover is to be inexpensive and modifying the cover of Andrieu with the material of Holland would defeat the objectives of Andrieu.

I) There is not motivation to combine Andrieu with Kite and the examiner has not explained how one of ordinary skill in the art would be motivated to do so.

J) The examiner is piecing together references without any explanation and therefore the combination of Andrieu with Holt is improper as there would be no need to protect the ends of such cables because the end would likely seriously interfere with the operation of the connected cable.

With respect to arguments A, D, E, & H, the examiner respectfully traverses. Andrieu clearly recognizes the problem of wires and cables needing abrasion and weather protection as claimed. Specifically, Andrieu clearly discloses a protective cover (Figs 1-4) for cables or hoses (abstract), which are capable of being used in environments wherein the cover (Figs 1-4), may be subject to abrasion and weather extremes (i.e. heat, Col 1, lines 12-20). While it has been admitted on the record that Andrieu doesn't necessary disclose the material being cut resistant or tear resistant, or being expensive, the courts have long held that the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985). In this case, Holland clearly teaches a protective cover, that is made of Spectra® fibers (Col 2, lines 28-37), that overcomes the disadvantages of prior art polyester fabric covers (Col 2, lines 16-23), has minimal weight, increased abrasion resistance, tear strength, cut and stab resistance, and is compatible with the environment (Col 1, lines 5-10). The examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references

themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Andrieu clearly teaches a protective cover for cables that may be made of polyester for protecting against weather elements (i.e. heat) and that is abrasion resistant as explained above. Holland clearly teaches a protective cover that is that is made of Spectra® fibers (Col 2, lines 28-37), that overcomes the disadvantages of prior art polyester fabric covers (Col 2, lines 16-23), such as the cover of Andrieu, and also has minimal weight, increased abrasion resistance, tear strength, cut and stab resistance, and is compatible with the environment (Col 1, lines 5-10). Clearly, both Andrieu and Holland are concerned with the protective covers providing abrasion and weather resistant as disclose above in the rejection. While Holland, states that the protective cover may be used with cargo container, Holland clearly teaches that the protective cover can also be utilized in other applications, where the protection of interior components by a cover having the properties of abrasion and weather resistance is needed (see Col 3, lines 18-24). Therefore, there clearly does exist a motivation to modify the polyester protective cover of Andrieu to comprise the Spectra® fibers and the fabric parameters of the protective fabric as taught by Holland because Holland teaches that such a fabric by made of commercially available Spectra® fibers and having the specified parameters, overcomes the disadvantages of polyester fabric covers (Col 2, lines 16-23), such as the polyester protective cover of Andrieu, and has minimal weight, increased abrasion resistance, tear strength, cut and stab resistance, and is compatible with the

environment in which the cover is used (Col 1, lines 5-10). Clearly as taught by Holland, a protective cover made of Spectra fibers not only fulfils the stated purposes of Andrieu (i.e. abrasion and weather resistant) but also teaches why such a protective cover is more superior that protective covers made of polyester materials, such as the protective cover of Andrieu. Based on the teaching of Holland, it has also been held that to be within general skill of a worker in the art to select a commercially available or known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416. Secondly, there clearly exist a reasonable expectation of success, since both Holland and Andrieu both teach protective covers that are utilized for some of the same purposes (i.e. abrasion and weather protection). Thirdly, the combination of Andrieu and Holland discloses all of the claimed invention. Therefore, all three basic criteria for establishing a prima facie case of obviousness have been met. In light of the above comments, the examiner submits that the combination of Andrieu and Holland is proper and just.

With respect to arguments B & I, the examiner respectfully traverses. Firstly, as stated above in the rejection, Kite clearly teaches a prior art wraparound closure device (Figs 1-4) made of a polyester fabric that protects elongated substrates, such as cables, from abrasion (Col 1, lines 5-10) as Andrieu also teaches. However, Kite is relied on for it's teaching of a wraparound sleeve (10-Fig 3) being formed as a plurality of bands (see three fabric sleeves not numbered) wherein each band comprises a short length of the fabric which are spaced apart along the length of the cable (Fig 3) for the purpose of providing effective bundling device that accommodates multiple cable break-outs (Col 1,

lines 38-45). Specifically, it has been stated that modified Andrieu doesn't necessarily disclose the sleeve being a plurality of bands comprising a short length of the fabric and being spaced apart along the length of the cable or hose (claims 10 & 23), nor each band having opposed longitudinally edges including means for fastening the opposed longitudinally edges together around the length of the cable (claims 11 & 24), however Kite teaches that such a cable wrap configuration is well known for the purpose of providing effective bundling device that accommodates multiple cable break-outs (Col 1, lines 38-45). The applicant admits in the Background of Invention section, that the configuration taught by Kite, is commonly utilized in protective covers. Specifically, the applicant states

> **"That protective covers formed of a plurality of bands of short length fabric providing abrasion resistant properties and being spaced apart along the length of the cable or hose are commonly utilized (see Page 1 of applicant's spec, lines 18-21).**

However, the examiner has relied on Kite for providing a factual teaching that a plurality of bands of short length fabric utilized for providing abrasion resistant properties and being spaced apart along the length of the cable or hose are commonly utilized in the cable art to allow multiple sections or points of the cable or hose section to breakout (i.e. separated) from the bundle to being routed in a different direction (see Col 1 of Kite, lines 38-50). Therefore, not only has the applicant admitted that such a configuration is well known, Kite clearly teaches an abrasion resistant prior art protective cover made of polyester and having a plurality of bands is well known. In light of the above, there clearly exist a motivation to modify the protective cover of modified Andrieu to comprise

a multiple protective covers as taught by applicant own admission of prior art and as taught by Kite because Kite teaches that such a well known fabric configuration protects elongated articles from abrasion (Col 4, lines 5-8) and provides effective bundling device that accommodates multiple cable break-outs (Col 1, lines 38-45). Secondly, there exist a reasonable amount of success, since such a modification is commonly made to protective covers as disclosed by applicant own admission of prior art and Kite. Thirdly, all of the claim limitations are taught by the combination and therefore, all three basic criteria for establishing a prima facie case of obviousness have been met. In light of the above comments, the examiner submits that the combination of Andrieu, Holland, and Kite is proper and just.

With respect to argument C & J, the examiner respectfully traverses. It is also known in the art of cables and hoses, that once a cable or hose is manufactured to a specified length, that the cable or hose is cut, thereby leaving the interior, such as conductors and insulation, exposed on the two cut ends (examiner has worked as Quality Engineer for two years in the cable manufacturing facility of Alcatel Cables of Tarboro, NC and takes Official Notice that cables are commonly cut on both ends to a desired length thereby exposing the interior components such as conductors). In order to protect the exposed interior components of the cable or hose on the cut ends, a protective hood is commonly utilized. While the examiner has stated the above, the examiner has relied on Holt for providing a factual teaching that providing exposed ends with protective covers that have excellent flame retardant, abrasion resistance, and split or tear resistance (Col 18, lines 21-26), are commonly utilized to protect exposed ends

of cables and pipes (Col 29, lines 23-24) for providing environmental protection, including electrical protection for the joining or mechanical holding of substrates such as cables or pipes (Col 1, lines 17-21). Therefore, clearly there exist a motivation to combine the teaches of modified Andrieu and Holt, exist a reasonable amount of success since they both deal with cable or hose applications, and all of the claimed structure is disclosed by the combination of the references. While the applicant is correct in stating that once a cable is in the field and connected to a termination point there would be no need for a protective cover, that also applies to the claimed invention. An end cap cannot be placed on the end of a cable (prior art's or applicant's claimed invention) if the cable is connected. This statement is further verified by applicant's disclosure (see Page 6 of applicant spec, lines 23-25), which states that the protective hood (i.e. end cap) is only utilized "when the cable or hose is not in use". In light of the above comments, the examiner respectfully submits that the criteria for establishing a prima facie case of obviousness has been met and therefore the combination of modified Andrieu and Holt is proper and just.

With respect to argument F, the examiner respectfully traverses. Firstly, it is the duty of an examiner to give claims their broadest reasonable interpretation in light of the supporting disclosure. In re Morris, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997). Given the above stated guideline, the examiner should refer to the specification to determine what constitute a "high performance yarn". In the specification, the applicant identifies a high strength yarn as being a high performance

yarn. Specifically, under the heading "Summary of the Invention", lines 5-10, the applicant states

> **"The protective cover is constructed from a woven fabric formed primarily from high strength (high performance) yarns."**

Given the broadest interpretation, it appears that the applicant is trying to state that high performance yarns are high strength yarns. Clearly polyester certainly is a high strength material as it is commonly employed as an abrasion resistant material as taught by the prior art references above. Therefore, given the broadest interpretation, the examiner states that polyester is a high strength material, i.e. high performance material.

With respect to argument G, the examiner respectfully traverses. While the applicant is correct in stating that Holland teaches that the protective cover may be used with cargo container, the applicant cannot ignore the other teachings of Holland. Specifically, Holland clearly teaches that the protective cover can also be utilized in other applications, where the protection of interior components by a cover having the properties of abrasion and weather resistance is needed (see Col 3, lines 18-24). Andrieu clearly teaches an application in which a cable is protected by a cover in which the properties of abrasion and weather resistance are needed. Therefore, Holland clearly teaches that its protective cover can be utilized in an environment as disclose Andrieu and not just cargo covers.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Primary Examiner

WHM III
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Conferees

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